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Attorney for Defendant: JAMES ROBERT LUJAN

FILED
DISTRICT COURT OF GUAM
SEP 27 2006
MARY L.M. MORAN
CLERK OF COURT

UNITED STATES DISTRICT COURT

DISTRICT OF GUAM

UNITED STATES OF AMERICA

Plaintiff,
vs.

JAMES ROBERT LUJAN,

Defendant.

CR05-00076-001

**DEFENDANT'S STATEMENT
OF POSITION CONCERNING
THE PRESENTENCE REPORT**

COMES NOW defendant JAMES ROBERT LUJAN through Defendant's counsel, VAN DE VELD SHIMIZU CANTO & FISHER, by Attorney Mr. Curtis C. Van de veld, Esq., pursuant to Federal Rules of Criminal Procedure, Rule 32, and District Court Of Guam Rules of Court General Order No. 98-00002, to state the Defendant's position concerning the Presentence Report.

Defendant here addresses the requirements of General Order No. 98-00002, which instruct that counsel shall state:

ORIGINAL

(1) All sentencing factors, facts and other matters material to sentencing that remain in dispute, including a statement and calculation if appropriate, showing how the dispute affects the calculation of the guidelines range.

(2) Whether an evidentiary hearing is requested and, if so, an estimate of the time required for such hearing and a summary of the evidence to be produced.

I. ALL SENTENCING FACTORS, FACTS AND OTHER MATTERS MATERIAL TO SENTENCING THAT REMAIN IN DISPUTE, INCLUDING A STATEMENT AND CALCULATION IF APPROPRIATE, SHOWING HOW THE DISPUTE AFFECTS THE CALCULATION OF THE GUIDELINES RANGE.

A. Factual errors contained in the Presentence Report.

Paragraph 10 of the Presentence Report states that the defendant has pled guilty for conduct that occurred beginning on May 4, 2000. The correct statement is that Defendant has agreed that the conduct occurred between May 4, 2000 and May 4, 2005, but not for the entire duration of time.

Paragraph 64 indicates that Defendant resided in Louisiana, Defendant resided in Okinawa, Japan; Camp Lejeune, North Carolina; California; Saipan and Guam.

Defendant's daughter Katie is 24 years of age (*See* ¶65) and his daughter Kristina Marie Lujan now lives in Las Vegas and is attending college. (*See* ¶66).

B. The presentence report contains the following legal errors.

1. The Probation Officer erred in applying USSG §2D1.1.

Defendant LUJAN is convicted of Count 1, *Distribution of 1.5 kilograms of Methamphetamine Hydrochloride*, as a violation of 21 U.S.C. 841(a)(1). The *Offense Conduct* portion of the Presentence Report explains that Defendant has been a user addicted to the substance of Methamphetamine for many years. The Presentence Report describes only one transaction of a large quantity of methamphetamine that involved Defendant LUJAN and supports the weight quantity of conviction. The description of that conduct is in paragraphs 25 through 37. The transaction involved Defendant LUJAN receiving from a source in California. That transaction involved approximately three pounds of crystal methamphetamine commonly referred to as "ice." (*See Presentence Report ("PSR")* ¶¶ 33 and 35.) A large portion of that substance was seized when a search warrant was executed at Defendant's former residence. (*See PSR* ¶23.) That substance was tested by DEA and found to be 858.5 grams of methamphetamine hydrochloride with a purity level of 69%. (*See PSR* ¶ 37.)

Considering that such a large portion of the substance from this single source transaction was recovered under the circumstances of the execution of a search warrant, it is only reasonable to assume that the entire amount of substance was similarly composed of like matter, methamphetamine hydrochloride with a purity of 69%.

For purposes of determining the sentence that is suggested by the Sentencing Guidelines, the court must bear in mind that “ice” under the Guidelines for purposes of its computation means “a mixture or substance containing d-methamphetamine hydrochloride of at least 80% purity.” (*See USSG 2D1.1 Notes to Drug Quantity Table, Note C.*)

The Probation Officer has erred in his application of the Guidelines in this case by treating the substance as “ice, i.e. a substance of 80% purity or greater, for purposes of the weight and substance offense level determination. The correct offense level should be:

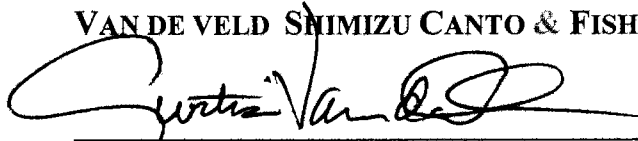
3 lbs. is equal to 3×0.4536 kg (*See measurement Conversion Table*) = 1.3608 kg of methamphetamine – Level 32. Applying the 3 level reduction for acceptance of responsibility, will reduce the offense level to 29. At Criminal History Category IV, the range of imprisonment is 121 to 151 months.

II. WHETHER AN EVIDENTIARY HEARING IS REQUESTED.

Defendant requests an evidentiary hearing to the extent the court determines that such is necessary to resolve the issues presented herein.

Respectfully submitted: Wednesday, September 27, 2006.

VAN DE VELD SHIMIZU CANTO & FISHER



Mr. Curtis C. Van de veld, Esq.
Attorney for defendant
JAMES ROBERT LUJAN

CERTIFICATE OF SERVICE

I, CURTIS C. VAN DE VELD, certify that I caused a copy of the foregoing document here filed, to be served on counsel for Plaintiff UNITED STATES OF AMERICA on September 27, 2006, via hand delivery at the following address:

Ms. Karon V. Johnson, Esq.
Assistant U.S. Attorney
U.S. Attorney's Office,
District Of Guam
Criminal Division
6th Floor, Sirena Plaza
108 Hernan Cortes Avenue
Hagåtña, Guam 96910

and to,

Mr. Stephen P. Guilliot
United States Probation Officer
United States Probation Office,
District Of Guam

District Court Of Guam
2nd Floor, 520 W. Soledad Ave.
Hagåtña, Guam 96910

Dated: Wednesday, September 27, 2006.

VAN DE VELD SHIMIZU CANTO & FISHER



Mr. Curtis C. Van de veld, Esq.
Attorney for Defendant
JAMES ROBERT LUJAN

There are people who think my dad is a criminal, but he is anything but that. My name is Raymond Lujan and James Lujan is my father. I am the second youngest in my family and I am fifteen years old. I am a sophomore at Notre Dame High School and it is a very important year for me. My dad held my family together and I don't know what we'll do. All I know is it is going to be real hard and stressful. I am going to miss him coming to all my sports games, or spending the weekend at his house, watching movies and most especially his cooking. It is really hard to concentrate in school because I am so worried and stressed out. I just want my dad to be at my graduation and for him to see me off to college and if I have kids in the future I want him to be around. I always get really emotional when I think of situations like that, but it is reality. I am trying to stay strong for my family and mostly my little brother Manny, he is the baby of our family. He is in the fifth grade right now and he is too young to fully understand what is going on. So I am trying to get his mind off things and stay positive. I pray every single morning and night for my dad to be safe, healthy, happy and FREE and hopefully God realizes how much our family is hurting from this incident. I guess everything happens for reason. No matter what people think or say he is the best dad anyone can ask for and I love him and

I will miss him, not only me, but my whole family. I hope you understand, thank you for taking time to read this letter. It means a lot to me and I needed that release in a way.

Sincerely,

Raymond Vincent Lujan

September 24, 2006

To: Judge England

My name is Jennifer Lujan and I am James Robert Lujan's daughter. I am writing this letter not to make excuses for my father, but to let you know that he is a loving father and grandfather. It will be so hard to try and continue with our lives, knowing that our father will not be here with us. Just imagining all the years that will go by with my father away from us on holidays and special occasions hurt so much. I wish my father could be able to watch his children grow older and be apart of things that may happen in our lives. My father always wanted the best out of his kids and encouraged us to work hard and be there for one another. I want my father to see me graduate from college, walk me down the isle, and be there when I start a family of my own. I will miss the times that we go to his house the weekends or stop by just to say hi. The main thing that I am praying for is my father's safety. I am so scared that my father will be alone and I just want him taken care of. I will cherish all the memories I had with my father and will continue to love and support him for the rest of my life. I want to thank you for taking the time to read this letter because it means so much to me and my family.

Thank You,

Jennifer Lujan
9/24/06

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From: "Kristina M. Lujan" <krissy@guam.net>

Date: Mon, September 25, 2006 3:02 am

To: landforall@guam.net

Cc: landforall@guam.net

Priority: Normal

Options: [View Full Header](#) | [View Printable Version](#) | [View Message details](#)

To whom it may concern,
My name is Kristina Lujan, I am seventeen years old, and the reason I am writing this letter is because, my father is James Lujan. I feel like the punishment is too harsh for his crime. It's not fair for his kids to see their father going to jail for a very long time. My dad may have done some wrong things in his life, but he's a good man, he's a good dad. I am asking that you please consider the decision you make. I just graduated from high school and I was lucky enough to have my dad be there. And he was also there for my confirmation. It makes me sad to know that if he does go to jail, he will miss out on my two younger brothers graduations and their confirmations. No one deserves to go through life and have all their most important life moments without their father. My dad is one of my best friends and I can talk to him about anything. He tells us to be strong, but how can we. How can we be strong when we know that our father is going to miss out on so much of our lives. I currently moved to Las Vegas, Nevada to go to college. I moved out here on July 15, 2006 and I'm living with my oldest sister and her two boys. My dad keeps telling me that everything will be ok. He says, at least will be able to see each other. He has a good heart and he's going in to this thing with a good mind. He mentally prepared himself for this, but its still too long to be away from our father. So, now that you have a little of an idea of what this is doing to us, I hope and pray that you show a little more mercy on my daddy.

Thank you,
Kristina Lujan

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September 24, 2006

Dear Judge England,

In the eyes of society, James Lujan is a dangerous man. A monster that is evil and should be locked away for ever. In the eyes of his six children and two grandsons' he is a man who has made a few mistakes in life. A man with a gracious heart. Someone we can confide with. To us James Lujan is our father who shows us unconditional love. Although mistakes have been made and its time to suffer the consequence, we ask that you have consideration when giving our dad his sentence.

It will be heart breaking knowing that our father can only grow with his children and grand children thru letters and pictures while being locked up behind bars. Our father has so many different occasions that we desperately need him to be apart of. Such as: my children's first day of school, my sisters Jennifer and Kristina graduating college. My brother James Robert Jr graduates the military, my brothers Raymond and Francisco (Manny) graduating from high school. This is just to name a few.

Your honor, my dad has admitted to his mistakes and is willing to accept the penalties. All I ask is that you have a heart. My dad means the world to our family. He has finally shown a side we have never seen or heard of before. Prior to all this, our father was a very distant man. One who kept to himself and was never there for his children. Now since all this, my dad takes my brothers and sisters to church. He makes it a point to be attentive and supportive in all that we do. Most of all, he is very loving, patient, and giving. Please your honor; don't with hold all this from us all. We have suffered through all this just as much if not more then our father has.

Sincerely,
Katie Erin Lujan
(Oldest daughter)

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Subject: dads letter

From: "Katie Lujan" <katielujan@yahoo.com>

Date: Sun, September 24, 2006 7:09 pm

To: "mom" <landforall@guam.net>

Priority: Normal

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September 27, 2006

**Honorable Judge Morrison England
U.S. District Court of Guam**

Your Honor,

Thank you for reading my words that I hope will bring light to the good man that our friend Mr. James Robert Lujan really is and who appears before you today. "Jim" is a man that loves his children and they in turn love him so very much.

He is a man that has contributed to our community of Guam more than most public government servants through his unselfish volunteer of time to those that are less fortunate. As an advocate for persons with disabilities, particularly individuals with mental retardation, I am aware that he was nominated as the "Volunteer Of The Year" for a local non-profit organization that assists persons with cognitive disabilities. Jim availed himself during fundraising events that required the logistics for the set-up of venues, particularly when heavy props were needed. He either used his personal vehicle or coordinated transportation for these numerous functions. In matters of the day-to-day operation, he often remained on-call and rescued stranded field social workers whose cars broke down, as he had mechanical skills. He assisted with the maintenance of the consumers' homes in the community and was very handy at lending his talent with horticultural projects that they underwent. In a similar fashion, he participated with another non-profit organization whose mission was to promote community diversity via the humanities disciplines. The Public Forum Committee acknowledged him most notably there.

Shortly after the destruction of Super typhoon Pongsona, we did outreach and delivered FEMA supplies to families of persons with disabilities in remote areas of Guam that did not have transportation. The following year, he did committee volunteerism for the St. Jude Church 5K fundraiser in an effort for roof restoration. Last year, he was the major sponsor of a young Liberation Day candidate for our village of Sinajana, through the promotion of raffle tickets that garnered proceeds to augment the lack of funding for the purchase of needed books for the Guam Public School System elementary grades.

He often mowed his neighbors' yards because they did not have lawn equipment and usually threw in additional effort lending his landscaping acuity. He is a person that respected the ocean and as a fisherman would share his "catch" with neighbors, friends, and strangers alike. He always shared his views about sports, history and world current events with his children giving them a broader view of life.

The aforementioned are just some of the surface goodness about Jim. Many are fond of him and his inherent inclination for goodness and his remorse demonstrate his spiritual depth. We kindly ask that you allow him to come back to our community and our lives in a very short time from now.

Sincerely,



Peter Aflague Blas

Retired Advocate & Community Leader